IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 369 of 1993

For Approval and Signature:

HONOURABLE MR.JUSTICE H.B.ANTANI

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1 Whether Reporters of Local Papers may be allowed to see the judgment?

2 To be referred to the Reporter or not?

3 Whether Their Lordships wish to see the fair copy of the judgment?

4 Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder?

5 Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT - Appellant

Versus

VIRESHKUMAR DINUBHAI PATEL – Respondent

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Appearance :
MR KC SHAH, ADDITIONAL PUBLIC PROSECUTOR for the Appellant.
NOTICE SERVED for the Respondent.
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CORAM : HONOURABLE MR.JUSTICE H.B.ANTANI

Date : 07/03/2006

ORAL JUDGMENT

1. The present appeal, under Section 378 of the Code of Criminal Procedure, 1973, (*"the Code"*, for short), is filed against the judgment and order of acquittal passed by the learned Judicial Magistrate (First Class), Kapadwanj on 14-12-1992 in Criminal Case

No. 522 of 1986 whereby the learned Magistrate acquitted the respondent-original accused for the offences committed under Sections 408, 477A, 465 of the Indian Penal Code, 1860.

2. The short facts giving rise to the present appeal are as under:

The incident in question took place on 12-06-1985. The respondent was working as a Clerk in the Kapadwanj Octroi *Naka*. When he was on duty as a Clerk at the Kapadwanj Octroi *Naka*, the amount, deposited towards the goods imported by Morgan Company, was not entered into in the *Rojmel* Diary and thus, he misappropriated an amount of Rs. 453.60ps. (Rupees Four Hundred Fifty-Three and Sixty Paise Only). A complaint was given by one Ibrahim Karimbhai Shaikh, and on the strength of the complaint, offences punishable under Sections 408, 477A, 465 of the Indian Penal Code were registered against the respondent. The matter was investigated and the Investigating Officer recorded statement of those persons, who were conversant with the matter.

3. On completion of the investigation, the respondent was charge-sheeted in the Court of learned

Judicial Magistrate (First Class), Kapadwanj. The learned Judicial Magistrate (First Class), Kapadwanj framed necessary charge *vide* Exh. 5. It was read-over and explained to him. He pleaded not guilty to the same and claimed to be tried. The prosecution, therefore, examined the following witnesses to prove its case against the accused:

(i) PW 1, Ibrahimbhai Karimbhai Shaikh, who is the original complainant, *vide* Exh. 21.
(ii) PW 2, Anilkumar Bhailal Trivedi, *vide* Exh. 28.
(iii) PW 3, Mohd. Ali Musabhai *vide* Exh. 29.
(iv) PW 4, Harishchandra Punamchand Shah *vide* Exh. 30

The prosecution has also relied on the following documents:

(i) Letter written to the Chief Officer, Kapadwanj Nagar Palika *vide* Exh. 23.
(ii) Attempt to serve the summons on Shri R. Mani of Morgan Company, *vide* Exh. 27.
(iii) Complaint *vide* Exh. 22.

4. After recording of evidence of prosecution

witnesses was over, the learned Magistrate explained to the respondent, the circumstances appearing against him in the evidence of prosecution witnesses and recorded his further statement, as required by Section 313 of the Code. In his further statement, the claim advanced by the respondent was that he was innocent.

6. The learned Magistrate, after going through the entire gamut of oral deposition and documentary evidence adduced before him, came to the conclusion that as the complainant has not made out case for offences punishable under Sections 408, 477A and 465 IPC, the accused is liable to be acquitted. The learned Magistrate further held that it is not proved in a conclusive manner that the amount of Rs.453.60ps was deposited by the Morgan Company and the necessary entry in that regard was not made in the Register and, therefore, the accused is liable to be acquitted. It is also held by the learned Magistrate that as the entire link connecting the accused with the commission of offences has not been established by the prosecution, benefit of doubt can be given to the accused and he is liable to be acquitted for the offences for which he has been charged.

7. Heard Mr. K. C. Shah, learned Additional Public

Prosecutor on behalf of the appellant-State. Though the respondent is duly served, he is not represented by a lawyer. I have also taken into consideration the further statement of the accused under Section 313 of the Code and the defence raised therein.

8. The learned Trial Magistrate, by judgment and order dated 14-12-1992, has come to the conclusion that the prosecution has not established the case beyond reasonable doubt indicating the involvement of accused in the commission of offences. On perusal of the deposition adduced by the complainant Ibrahimbhai Karimbhai Shaikh at Exh. 21, it becomes clear that the amount, which was received, was not entered in the Register maintained for that purpose. It was also not reflected in the *Rojmel* maintained by the Octroi Station and the necessary entries in that regard were not made in the *Rojmel*. With regard to the document produced at Exh. 23, he has merely stated in the deposition that he is producing the same, but nothing is mentioned in his deposition about the contents of the document or who had signed that document. PW 2 Anilkumar Bhailal Trivedi, who is examined *vide* Exh. 28, does not say anything about the incident and, therefore, the deposition adduced by him is also of no

help to the prosecution. PW 3 Mohd. Ali Musabhai, who is examined *vide* Exh. 29, has deposed in his testimony that on the relevant date, the accused was working as a Clerk in the *Octroi Naka*. Nothing further is deposed by him so as to indicate involvement of the accused in the commission of offence. The deposition adduced by Harishchandra Punamchand Shah at Exh. 30, also, does not indicate the involvement of accused in the commission of offence.

9. If one peruses the documentary evidence and more particularly, the document produced at Exh. 23, then it becomes clear that the same was produced during the course of deposition adduced by Ibrahimbhai Karimbhai Shaikh at Exh. 21, but the contents of the document were not proved nor the signature of the document has been conclusively proved by the prosecution. Thus, the prosecution, in my view, miserably failed to prove the inextricable involvement of the accused in the commission of offences punishable under Sections 408, 477A and 465 IPC. The entire link connecting the accused with the commission of the offence has not been established by the prosecution. Taking into account the entire gamut of oral deposition and the documentary evidence relied upon before the Trial Court, the learned Magistrate has

rightly acquitted the respondent for the commission of offences punishable under Sections 408, 477A and 465.

10. This is an acquittal appeal in which the Court would be slow to interfere with the order of acquittal. Infirmities in the prosecution case go to the root of the matter and strike a vital blow on the prosecution case. In such a case, it would not be safe to set aside the order of acquittal, more particularly when the evidence has not inspired confidence of the learned Magistrate who had the opportunity to observe demeanour of the witnesses. As this Court is in general agreement with the view expressed by the learned Magistrate, the Court does not think it necessary either to reiterate the evidence of prosecution witnesses or to restate the reasons for acquittal given by the learned Magistrate and this Court is of the opinion that expression of general agreement with the view taken by the learned Magistrate would be sufficient in the facts of the case. This is so in view of the decisions rendered by the Supreme Court in the cases of (1) **Girija Nandini Devi & Others Vs. Bijendra Narain Chaudhari, AIR 1967 SC 1124**, and (2) **State of Karnataka Vs. Hema Reddy and Another, AIR 1981 SC 1417**.

11. For the foregoing reasons, the appeal fails. *Muddamal* be disposed of in terms of terms of directions given by the learned Magistrate of the Trial Court.

[H. B. ANTANI, J.]

/shamnath